

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption In Compliance with D.N.J. LBR 9004-1

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Counsel for Blue Yonder, Inc.

In re:

Bed Bath & Beyond Inc., et al.,¹

Debtor.

Case No. 23-13359 (VFP)

Chapter 11 (Jointly Administered)

Judge Vincent F. Papalia

OBJECTION TO NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Blue Yonder, Inc. (“Blue Yonder”), hereby files this objection and reservation of rights (the “Objection”) to the *Notice to Contract Parties to Potentially Assumed Executory Contracts*

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these Chapter 11 Cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

and Unexpired Leases [Docket No. 714] (the “**Assumption Notice**”) filed by the above-captioned debtors and debtors-in-possession (the “**Debtors**”).

OBJECTION

1. As set forth in the Assumption Notice, the Debtors “may assume and assign to the Successful Bidder” the contracts or agreements listed on Exhibit A to the Assumption Notice.

2. The Debtors have five separate entries for Blue Yonder (at page 11 of 46) which reference the following: (a) Schedule 4-A to Cloud Services Subscription and Professional Services Agreement; (b) Subscription Premier Support; (c) WFM Renewals; (d) JDA Assignment Agreement; and (e) Renewal for 2023/2024 with the reduction in force.

3. The only cure amount listed is \$2,405,862.44 in relation to the JDA Assignment Agreement.

4. Debtor Bed Bath & Beyond, Inc. (“**BB&B**”) and Blue Yonder are currently parties to the Cloud Services Subscription and Professional Services Agreement (the “**Cloud Services Agreement**”). Section 11(f) of the Cloud Services Agreement provides that the agreement, including without limitation any Schedules and Statements of Work, set forth the entire understanding and agreement between the parties.

5. A debtor in possession cannot assume parts of an executory contract, but instead must assume the entire contract. See In re MF Glob. Holdings Ltd., 466 B.R. 239, 241 (Bankr. S.D.N.Y. 2012) (noting that an executory contract may not be assumed in part and rejected in part, and that the debtor must either “assume the entire contract, *cum onere*, or reject the entire contract, shedding obligations as well as benefits”). In this case, the Debtors must assume the Cloud Services Agreement, inclusive of Schedule 1-A (“**Schedule 1-A**”), Schedule 2-A (“**Schedule 2-A**”), Schedule 3-A (“**Schedule 3-A**”), Schedule 4-A (“**Schedule 4-A**”) and Statement of Work

2022-0304 (the “**Statement of Work**” and with the Cloud Services Agreement, Schedule 1-A, Schedule 2-A, Schedule 3-A and Schedule 4-A, the “**Contract**”).² Blue Yonder has continued to perform under the Contract post-petition.

6. Additionally, the cure amount must reflect **all** amounts owing as of the assumption date. Pursuant to section 365(b)(1)(a) of the Bankruptcy Code, a debtor in possession is prohibited from assuming an executory contract or unexpired lease unless it cures all monetary defaults in full – including all monetary defaults that arise both pre- and post-petition. In this case, BB&B presently owes the total amount of \$1,839,122.12 under the following invoices issued under the Contract: (a) Invoice No. 220210956, dated as of September 1, 2022; (b) Invoice No. 220211288, dated as of September 7, 2022; (c) Invoice No. 220211696, dated as of September 21, 2022; (d) Invoice No. 220212703, dated as of October 5, 2022; and (e) Invoice No. 220213083, dated as of October 19, 2022. Copies of these invoices are attached hereto as **Exhibit A**.

7. Furthermore, the following additional amounts will soon be invoiced by Blue Yonder: (a) \$736,792.91, which will be invoiced on or about June 30, 2023, when Schedule 2-A auto-renews; (b) \$24,040.00, which will be invoiced on or about June 30, 2023, when Schedule 3-A auto-renews; and (c) \$1,795,500.00, which will be invoiced on or about September 1, 2023 in accordance with the Statement of Work.

8. Accordingly, to the extent that Blue Yonder has invoiced, or will invoice, BB&B for additional services provided under the terms of the Contract, and such invoices are not paid in the ordinary course of business and prior to the proposed assumption, or assumption and assignment, of the Contract, then such invoiced amounts should be included in the cure amount.

² Blue Yonder believes that the Debtors are in possession of the Contract, and therefore the Contract is not attached to this Objection. Blue Yonder will provide a copy of Contract to the Debtors or other appropriate parties in interest upon request (Blue Yonder reserves the right to redact said documents to the extent necessary to protect confidential, proprietary and/or otherwise protected information).

See 3 COLLIER ON BANKRUPTCY § 365.05[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2008) (“The other party to the contract or lease that the trustee proposes to assume is entitled to insist that any defaults, whenever they may have occurred, be cured, that appropriate compensation be provided, and that, a past default having occurred, adequate assurance of future performance is available.”); *see also Stoltz v. Brattleboro Housing Authority*, 315 F.3d 80, 94 (2nd Cir. 2002) (noting that the requirement to cure all defaults “protect[s] the creditor’s pecuniary interests before requiring a creditor to continue a contractual relationship with a debtor”).

RESERVATION OF RIGHTS

9. The Debtors have not yet provided Blue Yonder with adequate assurance information or information concerning the Successful Bidder. Accordingly, Blue Yonder cannot, at this time, make an informed decision regarding whether it consents or objects to the assumption, or the assignment, of the Contract. Blue Yonder therefore reserve its rights to: (a) object to the assumption and/or assignment of the Contract; (b) amend or supplement this Objection and object to the assumption and/or assignment of the Contract for lack of adequate assurance of future payment; and (c) modify or supplement this objection and present such evidence as it deems appropriate in connection with any hearing to consider this Objection.

Date: June 21, 2023

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Mark C. Errico

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Counsel to Blue Yonder, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 21, 2023, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

/s/ Mark A. Salzberg
Mark A. Salzberg